Vol 311

JUN 4 1940

CHARLES ELMORE CROPL
CLERK

Supreme Court of the United States

OCTOBER TERM, 1939

NO. 123

HARRIET K. MOON, *Petitioner*,

VS.

HOME LIFE INSURANCE COMPANY OF NEW YORK, a corporation, *Respondent*.

PETITION FOR WRIT OF CERTIORARI AND BRIEF OF PETITIONER

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Standard Pig. & Pub. Co., Law Printers, Huntington, W. Va.

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Supreme Court of the United States

OCTOBER TERM, 1939

NO.....

HARRIET K. MOON, *Petitioner,*

VS.

HOME LIFE INSURANCE COMPANY OF NEW YORK, a corporation, *Respondent.*

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FOURTH CIRCUIT.

To the Honorable Chief Justice and Associate Justices of the Supreme Court of the United States:

Petitioner, Harriet K. Moon, respectfully asks this Court to review, on writ of certiorari, that certain judgment of the United States Circuit Court of Appeals for the Fourth Circuit in the case of Home Life Insurance Company of New York, a corporation, Appellant, vs. Harriet K. Moon, Appellee, rendered on March 12, 1940 (Tr. p. 256), a petition for rehearing therein having been filed (Tr. p. 257) and a rehearing denied by said Court by order entered on the 11th day of April, 1940 (Tr. p. 263), all of which will more fully and at large appear by reference to a true copy of the record in said cases, properly certified, herewith filed as a part hereof.

I.

SUMMARY STATEMENT OF THE MATTERS INVOLVED

Harriet K. Moon, the petitioner, instituted her action against the above-named Home Life Insurance Company of New York, a corporation, in the Circuit Court of Cabell County, West Virginia, a State court (Tr. p. 246), to recover upon two certain insurance policy contracts for accidental death benefits, each contract in which she was named as beneficiary, calling for the sum of $5,000.00, because of the accidental death of Charles C. Moon, the insured, whose death occurred July 11, 1938 (Tr. p. 1), the said insurance policies having been applied for within, countersigned, and delivered to the insured while he was a resident of, the State of West Virginia, and in which State he resided at the time of his death (Tr. p. 7, 17, and 19 to 34 both inclusive). This suit was removed by the said Insurance Company, defendant, to the District Court of the United States for the Southern District of West Virginia upon the ground of diversity as to Citizenship (Tr. p. 246), the plaintiff being a resident of the State of West Virginia (Tr. p. 7), where it was tried to a jury. (Tr. p. 11.)

For the reason that the facts in this case were identical with the facts in the case of Harriet K. Moon v. Mutual Benefit Health & Accident Association, a corporation, also instituted upon an insurance policy contract in the state court aforesaid and likewise removed to the same District Court, the sole question of liability upon said policies being whether or not the insured, Charles C. Moon, came to his death solely from bodily injury caused by accident, or whether the said Charles C. Moon came to his death as the result of self-destruction (Tr. p. 4), (the other defenses in said answer being later withdrawn by stipulation, Tr. p. 246) the District Court, by consent of the

parties, directed the said causes to be tried together (Tr. p. 41) and by reason thereof the transcript of the evidence filed in this case is also a transcript of the evidence filed in the case of Mutual Benefit Health & Accident Association.

At the conclusion of the plaintiff's testimony, defendant moved for a directed verdict, which motion the Court overruled (Tr. p. 163), and thereafter, at the conclusion of all the testimony, the defendant again moved the Court for an instructed verdict upon the same grounds assigned in motion at conclusion of plaintiff's testimony, which motion was again overruled by the Court. (Tr. p. 230.)

The jury found a verdict in favor of this petitioner for Ten Thousand Dollars ($10,000), the face of the two policies, and the defendant moved to set aside the said verdict and grant it a new trial (Tr. p. 12), which motion the Court over-ruled and judgment was thereupon entered by said District Court on July 6, 1939, in favor of this petitioner, against the said Home Life Insurance Company of New York, a corporation, for the said sum of Ten Thousand Dollars ($10,000) and costs. (Tr. p. 13.)

From this judgment the Home Life Insurance Company of New York, a corporation, defendant below, appealed to the United States Circuit Court of Appeals for the Fourth Judicial Circuit (Tr. p. 14), which court, after a hearing (Tr. p. 247) on March 12, 1940, rendered its opinion (Tr. p. 248) and entered its order (Tr. p. 256) setting aside the judgment of the District Court so entered as aforesaid, and remanded the said cause to the District Court with directions to enter judgment in favor of the defendant below, the said Home Life Insurance Company.

Thereafter, and within the time provided by law, this petitioner filed her petition in said Circuit Court of

Appeals praying for a rehearing in each of said cases (Tr. p. 257), and by order entered by said Court on April 11, 1940, the rehearing was denied. (Tr. p. 263).

The insurance contracts appear in the record (Tr. pp. 17, 19 to 34 both inclusive), and were in full force and effect on the 11th day of July, 1938, the date of the insured's death. (Tr. p. 45.)

Charles C. Moon was on that date living with his wife at Number 1121 West Fourth Street in the City of Huntington, Cabell County, West Virginia, and was the father of two children, Jackie, aged twelve, and Maudine, aged Nine. (Tr. p. 106.) About four o'clock P. M. on Monday, July 11, 1938, the said Charles C. Moon, a man of medium build, 5 feet and 9 inches tall (Tr. pp. 148-149-39), was found dead in the small fish pond or lily pool at the rear of his home aforesaid. (Tr. pp. 48-50-52-54.) The pool, built of concrete, was rectangular in shape extending generally north and south. (See picture, Tr. pp. 46, 244 (a).) It was 85½ inches long, 57 inches wide, and 22½ inches deep (Tr. p. 56), and normally had about 16 inches of water in it. (Tr. p. 151.) In the pool at the time, on the west side, was a tub containing water lilies; an earthen or stone jar containing cat-tails, and water hyacinth growing on the surface of the water (Tr. pp. 57-145), and a concrete block of two steps, unstable and loose (Tr. pp. 56-59-71), near to which steps were found the feet of the deceased. (Tr. pp. 56-71.) The northwest corner of these steps showed a recent violent blow, and over and across from the steps on the west side of the wall was a mark presumably where the steps had violently kicked or struck the side of the pool (Tr. pp. 59-60-74), and on the wall, at this place, was a fresh chip from the concrete steps. (Tr. pp. 59, 74.) Floating on the surface of the water was the hat of the insured. (Tr. p. 57-72.) The water was cut off at this hour and was only about 9 or 10 inches deep (Tr. pp. 74-58-52), and the insured,

fully clothed, was lying face up in the pool (Tr. pp. 52-57) his head in the northwest corner, his feet toward the southwest corner of the pool near these concrete steps, his knees, his hand, and his nose protruding from the water. (Tr. pp. 52-56-61-71.) The water in the pool was very bloody. (Tr. pp. 58-73.) The body of Moon was removed therefrom, and a deep wound in to the skull was discovered (Tr. pp. 57-75-86) on the back of his head just under the bulge. (Tr. p. 94.) An autopsy was performed by the Coroner of Cabell County, a medical doctor of considerable experience, which disclosed an incised wound on the bulge of the head about 2½ inches long, and the lower part of the cut muscle was bruised. (Tr. pp. 83-86.) The immediate cause of death was drowning. (Tr. p. 91.) In the opinion of the Coroner the wound on the back of the head was of the type which could have been caused by striking the back of the head upon the side of the pool or on the drain pipe which protruded about 3 inches from the bottom of the pool at the place where the head was lying (Tr. pp. 87-88), and was sufficient to have caused unconsciousness. (Tr. p. 88.) All other findings were normal. (Tr. p. 89.) In the opinion of the Coroner, the insured had probably been dead since 5:00 or 6:00 A. M. (Tr. p. 83.)

There were no eye witnesses to the death, nor had the insured been seen by any one since about 5:00 A. M. of that day.

The evidence discloses that Moon was of a very happy, good-natured, disposition. (Tr. p. 214.) Prior to April 30th of that year, he had been employed by the Koppers Stores at a salary of $405.00 per month (Tr. p. 181); he was discharged on February 28, 1938, by reason of his increasing inattention to his duties and due to the so-called business recession (Tr. p. 181), receiving his pay, however, until April 30, 1938. (Tr. p. 185.) He was a high-grade salesman (Tr. p. 218), and after April 30th, had been sell-

ing dictaphones (Tr. p. 216); the amount of his earnings is not disclosed, although his bank account shows that in the period since April 30, 1938, to the date of his death, he had deposited $386.47 (Tr. p. 196-197); that he had been licensed as a sales representative of the Income Estates of America, of Philadelphia, for selling trust certificates, as of July 1, 1938, and was expecting to go to work any day, merely waiting for his remuneration contract from the Company (Tr. p. 216); that there was a wide field for that business, and Moon was very enthusiastic about this work (Tr. pp. 187-218); that he had his automobile (Tr. p. 112) and owned his home (Tr. p. 228), and presumably his household furniture; that he was hard up for ready cash, as thirteen checks had been presented to the bank, size not shown (Tr. p. 191), number of times repeated unknown (Tr. p. 198), which had been refused on account of insufficient funds, although the only indebtedness as shown by the record to have been outstanding at the time of his death, was $40.00 to Schoenbaum (Tr. p. 212), and $20.00 to one Deeba, the latter presumably given for a gambling debt on the early morning of his death. (Tr. p. 204.)

About 9:00 P. M. on Saturday Night, July 9, 1938 (32 hours before Moon, presumably, died, and 43 hours before his body was found), Moon and his wife had an argument, which began when Moon wanted to go on a party that night (Tr. p. 112-113), and his wife demanded that he stay at home. A short while later, and within about an hour following, Moon apparently left the home; came back without letting his presence be known, and listened in on the statement of his wife to his friends that he (Moon) "would not work around the house to put in some screens to keep the flies out, as he was a 'high-flyer' ". He came into the hearing of the friends and his wife; acted very angry; said he was going to a party (Tr. pp. 113-155-159), and went into his home—presumably preparing to go to the party. His wife, a short while later,

left the garage apartment in the rear of the home, where such events occurred, and, entering from the rear, went in the home, finding her husband in the living room writing a note, and as she approached he closed the notebook. (Tr. p. 113.) She tried to "get him out of his mood", but she was unable so to do, and Moon went on to his party (Tr. p. 114). He stayed out all night Saturday, all day Sunday, and all Sunday night (Tr. p. 153); was seen in a gambling house gambling early Monday (Tr. pp. 203-209-219), got his breakfast at a lunch counter downstairs from the gambling room about 4:00 A. M. on July 11th (Tr. p. 201), and then went home, arriving there around 5:00 A. M. A chain placed on the door prevented the use of his latchkey to gain admittance, and, upon his knocking, his son Jackie went to the door, admitted him, gave him the paper, and then went upstairs and crawled in bed with his mother. (Tr. pp. 100-107.) Moon stayed downstairs for a time and then came upstairs. Mrs. Moon and the son were at that time in one of the twin beds, she facing away from the door. The wife and son did not speak, but heard Moon in his accustomed chair, apparently in the act of removing his clothing. Moon did not speak, and in a few moments they heard him going downstairs; heard the door open and close, and they went back to sleep. (Tr. pp. 101-107.)

Around 8:30 A. M. Monday, July 11th, Mrs. Moon got up; Jackie, the son, preceded her down the steps, and finding an envelop on the little table in the living room near the davenport (Tr. p. 101) took it to his mother, who was then descending the stairs. (Tr. p. 108.) This note bears date the preceding Saturday night, refers to the incidents of Saturday night, namely, the argument which occurred when the reference was made to him being a "high-flyer", and which note appears at large in the record. (Tr. p. 110.) When Mrs. Moon received this note she at first refused to read it and asked for a match to burn it, but, upon the request of her son, read and, after

reading it, tore it up into bits and put it in the waste-paper basket. (Tr. p. 116.) In its then torn condition it was delivered, at Mrs. Moon's request to the Coroner, who pieced it together. (Tr. pp. 91-76-152.) Mrs. Moon prepared breakfast for the children; Jackie went out to play (Tr. p. 102); Mrs. Moon and a friend went down town to look for Mr. Moon (Tr. p. 49), and she was preparing again to go look for him at the time she discovered his body while going to the apartment garage for the purpose of cleaning it. Tr. p. 143.) As Mrs. Moon was going to this apartment garage, because of the fact that there was a leak in the pool which in dry weather caused a vast seepage, and as she had last observed the water the preceding afternoon (Sunday) when she saw that the water was running enough to keep it filled to the proper level, and thinking of the possibility that the fish in the pool would be dead, she started to examine the same. (Tr. pp. 144-145.) Upon approaching the pool she saw her husband's body, when she became hysterical and was attended by her friends. (Tr. pp. 48-50-95-98.) Moon was much interested in flowers and was seen frequently at the pond before going to his work (Tr. p. 96), and a few days before his death he had suggested that the cat-tails in the pond should be moved, and, his wife objecting, he said he would move them one of these days. (Tr. p. 147.)

The note in question, Marked "Exhibit 11" (Tr. pp. 110), is incorrect in point of fact as to the amount of insurance, as is shown by this record, and the tenor and effect argues, as petitioner contends, it was just a scare note, for on other previous occasions, when Moon wished to control his wife, he had threatened or suggested suicide. (Tr. pp. 126-129-134-135-136-138-162.)

Sometime soon after having written the note (Plaintiff's Exhibit 11), Moon wrote a letter to the Kimball Bank which expressed hope and enthusiasm for his new

work. (Tr. p. 193.) There is no evidence where Moon was ever moody, depressed, threatened to take his life, or even suggested suicide, except in those instances when he sought to control his wife as above set out.

The jury heard all the evidence, and at the conclusion thereof, and after argument of counsel, the Court charged the jury that the plaintiff must prove by a preponderance of the evidence the fact of accidental death before she could recover, and that in the event they be not satisfied, by a preponderance of all of the evidence, that death was accidental, or if their minds were evenly balanced upon the question of death by accident or death by suicide, they must find for the defendants. (Tr. p. 231.) After the jury had been out some short while, they returned into court and asked that the portion of the charge that instructed them as to what verdict to render should their minds be in a state of equipoise be re-read to them, which request was granted by the Court (Tr. p. 243), and thereafter the jury brought in a verdict for the petitioner (Tr. p. 12) which this petitioner asserts gives her the right to interpret the facts in this case in a light most favorable to the verdict. Judgment was entered upon said verdict. (Tr. p. 13.) The appeal of the defendant from said judgment resulted in the decision of the Circuit Court of Appeals of which petitioner complains.

II.

STATEMENT DISCLOSING BASIS UPON WHICH THIS COURT HAS JURISDICTION

The jurisdiction of this Court is invoked under the provisions of Section 240, Judicial Code, as amended (U. S. C. A., Title 28, Sec. 347 (a)).

III.

QUESTIONS INVOLVED

The following questions are involved:

1. The insurance contract in question, being a West Virginia Contract, did not the Circuit Court of Appeals err in failing to apply the general law of West Virginia as announced by the Court of last resort of that state with reference to

(a) the presumption against suicide,

(b) that suicide was an affirmative defense casting the burden of proof upon the defendant,

(c) that in a case where all the facts are circumstantial that the evidence must clearly establish suicide to the exclusion of every reasonable hypothesis consistent with death by accident,

(d) the right of trial by jury,

(e) that the inferences to be drawn from the evidence are not a question of law, but of fact to be settled by the jury,

(f) that the verdict of the jury is looked to to settle the issues made and the inferences to be drawn from the evidence (Tr. p. 262).

2. Did not the Circuit Court of Appeals err in drawing its own inferences from the evidence contrary to the verdict of the jury? (Tr. p. 262.)

3. Did not the Circuit Court of Appeals err in substituting its own view, inferences, conclusions and beliefs (Tr. p. 250) from the evidence for the verdict of the jury so returned? (Tr. p. 263.)

4. Did not the Circuit Court of Appeals, by its judgment, deny to the petitioner a trial by jury guaranteed to her by the 7th amendment to the United States Constitution?

IV.

REASONS RELIED ON FOR ALLOWANCE OF THE WRIT

Petitioner earnestly contends and respectfully submits that the writ of certiorari should be granted to review the judgment entered by said Circuit Court of Appeals for the following reasons:

1. Said Court has decided an important question of local law in conflict with the applicable local decisions, which decision will, in the future, permit the use of one rule of law in like insurance cases if the cause be tried in the Federal Court, and a different rule if the action be tried in the State Courts.

2. Said Court has so far departed from the accepted and usual course of judicial proceedings as to call for the exercise by this court of its power of supervision in the following particulars, viz:

(a) In effect denied trial by jury.

(b) Substituted its own beliefs and opinions for the verdict of the jury.

(c) Drew inferences from the evidence in conflict with the verdict of the jury.

(d) In effect denied the application of the rule as to local law announced by this Honorable Court in Erie R. Co., v. Tompkins (304 U. S. 64), and in effect reestablished

in said Circuit the rule with reference to local law found in Swift v. Tyson (16 Pet. 1, 18), Black & White Taxicab & Transfer Co. vs. Brown & Yellow Taxicab & Transfer Co. (276 U. S. 518), and New York Life Ins. Co. v. Gamer. (303 U. S. 161.)

3. The public interest will be promoted by a prompt settlement in this court of the questions involved herein.

WHEREFORE, YOUR PETITIONER RESPECTFULLY PRAYS that a writ of certiorari be issued out of and under the seal of this Honorable Court, directed to the United States Circuit Court of Appeals for the Fourth Circuit, commanding that Court to certify and send to this Court, for its review and determination on a day certain to be therein named, a full and complete transcript of the record and all proceedings in the case numbered and entitled on its docket, namely: Number 4571—The Home Life Insurance Company of New York, a corporation, Appellant vs. Harriet K. Moon, Appellee, and that the said judgment of the Circuit Court of Appeals for the Fourth Circuit rendered in said case may be reversed by this Honorable Court and the judgment of the District Court for the Southern District of West Virginia reinstated and affirmed, and that your petitioner may have such other and further relief or remedy in the premises as to this Honorable Court may seem meet and just; and your petitioner will ever pray.

HARRIET K. MOON

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